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July 16, 2012

Laurie Williams (ORC-3)
Assistant Regional Counsel
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Ms. Williams:

We are in receipt of the e-mail and documents you sent to us in the middle of the night over the weekend. We are very disappointed that you did not provide us with the requested legal and technical basis for the work you are claiming is suddenly needed on the Red Water Pond Road (RWPR). This is especially frustrating because the EPA only recently agreed that the work performed under the existing AOC addressed all current risks and health concerns with the RWPR, and would continue to be protective for at least another 3 years. Instead, you have threatened to issue a Unilateral Order if my client does not do what you want, without providing any response to the legal issues we raised, or providing any technical basis or justification for the demand.

Because of the ramifications of your threat to issue a Unilateral Order, it is necessary that all future communications between you and I be in writing with regard to the legal issues in this matter. We will need an appropriate record to refer to in the event that the EPA pursues a lawsuit of any kind against my clients with respect to any of the issues in this matter. We do not wish to have any misunderstandings or disputes resulting from oral communications. In light of this fact and that you informed us in your most recent communication that you would not be available by e-mail until Wednesday and then provided us with unreasonable timeframes to work within, I am copying Mr. Karr on this letter so that a formal written timely communication is received by your office in your absence.

We are also disappointed with the unreasonable time frame EPA has sought for a response, without providing any justification. We cannot provide you with a reasoned answer to your demand by the end of the week, particularly since the EPA has not provided the technical basis for the claims and has not even provided an action memo. The EPA has been aware for more than a year of the work to be started this summer by UNC, and for you to first inform us of your sudden desire to require a permanent remedy to the RWPR only two weeks ago and then demand an agreement to an AOC by the end of the week is inexcusable, particularly when we have asked you to provide your technical justification to us in writing as soon as you made your demand, and you have failed to do so. We will act as expeditiously as possible under the circumstances to

Laurie Williams
July 16, 2012
Page 2

assess your demand and consult with our client but in the absence of a clear factual and legal basis, some time will be required.

Please be advised that your proposed order relies on factual inaccuracies and unlawful conclusions. The entire basis of your demand, that there is an imminent and substantial threat to the public health and welfare, has not been demonstrated. The EPA agreed only a few months ago that the work conducted by my client on the RWPR mitigated any threats presented, and that no threat would exist, if ever, for years. You have admitted in phone conversations that the entire basis for your demand is the expediency presented by the UNC work. You do not want the local residents to be relocated a second time, so you want a "final remedy" on the RWPR done now. There is no health threat, and there is no risk of recontamination. The RWPR is perfectly fine as it currently exists, and for the foreseeable future.

Further, your office has continued to completely avoid the NCP process. You have not conducted an EE/CA or a recognized technical assessment process of any kind to evaluate and quantify the risk and then to establish what, if anything, needs to be done to the RWPR. Instead, it appears that you have decided on your own what you think should be done as a "final remedy", and that it should be done right now. The most glaring example is your requirement that a remedial goal of 2.24 pCi/g be attained. That level was taken from a risk assessment performed at another site, where it was based on grazing, crop production and residential use. None of that takes place on a roadway. The shortcuts taken by the EPA and its avoidance of NCP compliance are not acceptable. No emergency exists justifying the flouting of the CERCLA procedural process in determining your "final remedy".

As to other legal and factual errors contained in your demand, please be advised of the following: KMNC (RAML's predecessor) never leased the Site from 1967 to 1983; KMNC never held a lease on the Site when mining operations and accompanying releases may have occurred at the Site; and KMNC never owned or operated the RWPR.

Finally, you have never presented any evidence for your claim that the contamination of the RWPR is the result of the "spread of contamination" from the former Quivira Site. Your theory to date has been that haul trucks must have spilled dust. After three years, we are still waiting for you to present us the evidence that the current condition of the RWPR is the result of this theorized spillage.

We will discuss your demands with our client and respond further as soon as is reasonably possible.

Sincerely,



Mitchell J. Klein

Laurie Williams
July 16, 2012
Page 3

cc: Claire Trombadore
Ken Black
Mark Ripperda
Harrison Karr
Lucas Narducci